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OFFICE OF PETITIONS

In re Application of :  
Joseph R. Byrum et al. :  
Application No. 09/531,113 : DECISION ON PETITION  
Filed: March 22, 2000 : UNDER 37 CFR 1.78(a)(3)  
Attorney Docket No. 38-21(15761)B (16517.001) :

This is a decision on the petition filed March 25, 2008, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed non-provisional applications set forth in the amendment. In view of the amendment submitted, this petition is also being treated under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional applications set forth in the amendment.

The petition is **DISMISSED** as moot for the reasons stated below.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) an application filed under 35 U.S.C. § 111(a) before November 29, 2000; and (3) a nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 363 before November 29, 2000.

Since the instant nonprovisional application was filed prior to November 29, 2000, the provisions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) for acceptance of a late claim for priority do not apply to the subject nonprovisional application. Accordingly, the petition is dismissed as involving a moot issue.

In view of the above, the surcharge fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 1637 for further examination in due course.

Anthony Knight  
Supervisor  
Office of Petitions